

1 THE HONORABLE RICHARD A. JONES  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

10 THE STILLAGUAMISH TRIBE OF  
11 INDIANS,

12 Plaintiff,

13 v.

14 DAVID L. NELSON, et al.,

15 Defendants.

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17 CASE NO. C10-327RAJ

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27 ORDER GRANTING IN PART  
NELSON DEFENDANTS'  
MOTION TO QUASH NOTICES  
OF DEPOSITION

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17 This matter comes before the court on the Nelson defendants' motion to quash  
18 notices of deposition and to extend discovery deadline with respect to deposing the  
19 Nelson defendants. Dkt. # 209. In late October or November 2011, counsel for the  
20 Nelson defendants received a call from an Assistant United States Attorney advising him  
21 that while the criminal investigation had been dormant, the investigation of the Nelson  
22 defendants had not died. Dkt. # 210 (Shafer Decl.) ¶ 3. Counsel for the Nelson  
23 defendants has been advised that the statute of limitations for bringing the criminal action  
24 against them expires by the end of May 2012. *Id.* ¶ 4. The Nelson defendants argue that  
25 if the depositions are not postponed until after the end of May 2012, they will be in the  
26 untenable position of either asserting their Fifth Amendment Privilege against self-  
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1 incrimination, and suffer the fate of an adverse inference instruction, or testifying and  
2 waiving the privilege. *See Doe ex rel Rudy-Glanzer v. Glanzer*, 232 F.3d 1258, 1264 (9th  
3 Cir. 2000) (adverse inference may be drawn in civil case where a witness invokes the  
4 Fifth Amendment right against self-incrimination when silence is countered by  
5 independent evidence of the fact being questioned, but that same inference cannot be  
6 drawn when there is no evidence to support the allegation). Plaintiff argues that an  
7 extension of the discovery cut-off until July 31, 2012 would unduly prejudice it and other  
8 parties. Dkt. # 225 at 8.<sup>1</sup> Plaintiff argues that it should not be deprived of the  
9 opportunity to file dispositive motions and narrow the issues for trial.

10 Trial is currently set for September 10, 2012, the dispositive motions deadline is  
11 set for June 12, 2012, and the discovery cut-off is May 14, 2012. The court understands  
12 the concerns raised by both parties. Accordingly, the court GRANTS the Nelson  
13 defendants' motion to quash and extend the discovery deadline in part. The discovery  
14 cut-off of May 14, 2012 will remain for all discovery other than the depositions of the  
15 Nelson defendants. The depositions of the Nelson defendants must be completed by June  
16 29, 2012.<sup>2</sup> The new dispositive motion deadline will be July 31, 2012. The new trial  
17 date will be November 5, 2012. Other pre-trial deadlines will be adjusted based on the  
18 new trial date. The Clerk of Court is ORDERED to issue a new scheduling order  
19 consistent with this order.

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21 <sup>1</sup> The court notes that plaintiff filed its response two days after it was due. Additionally,  
22 the court puts the parties on notice that it will not tolerate unfounded accusations or vitriolic  
23 responses by counsel. The court expects counsel to treat each other with professional courtesy.  
24 The court also expects the parties to read and abide by the Federal Rules of Civil Procedure and  
the Local Civil Rules, including meet and confer requirements. The parties are on notice that  
future violations of the court rules may result in sanctions.

25 <sup>2</sup> The Chapman defendants originally filed a joinder to the Nelson defendants' motion  
with respect to deposing the Chapman defendants. They have since filed a separate motion to  
quash deposition notices raising the same concerns as the Nelson defendants. Dkt. # 218. That  
motion is not yet ripe. The court encourages the parties to file a stipulation, consistent with this  
order, with respect to extending the deadline for deposition of the Chapman defendants.

1 Dated this 13<sup>th</sup> day of April, 2012.  
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Richard A. Jones

The Honorable Richard A. Jones  
United States District Judge